



BY EMAIL

Email: foiparequest@ic.fbi.gov

December 22, 2016

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Dear FOIA officer:

This letter is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the Federal Bureau of Investigation (“FBI”).

EPIC seeks records pertaining to the FBI’s investigation of Russian interference in the 2016 U.S. Presidential election. This interference, by a foreign government in the democratic processes of the United States, is under investigation by the U.S. Intelligence community and is of widespread concern to the American public.¹ The activities of the Russian government also pose a risk to democratic institutions in other countries.

Background – The Russian Attack on the 2016 U.S. Presidential Election

During the 2016 election season, there were numerous cyberattacks on both the Democratic National Committee and the Republican National

¹ *Statement on Requests for Additional Information on Russian Interference in the 2016 Presidential Election*, Dir. of Nat’l Intel. (Dec. 16, 2016), <https://www.dni.gov/index.php/newsroom/press-releases/215-press-releases-2016/1460-statement-on-requests-for-additional-information-on-russian-interference-in-the-2016-presidential-election>.

Committee.² News reports indicate that the FBI first contacted the DNC about potential cyber threats in September 2015.³ However, until the FBI met with party officials in March 2016, the FBI's response was limited to one telephone call to an I.T. contractor and several voicemail messages.⁴ The head of the cybersecurity firm hired by the DNC in April 2016 said "he was baffled that the F.B.I. did not call a more senior official at the D.N.C. or send an agent in person to the party headquarters to try to force a more vigorous response."⁵

By March 2016, a second group of hackers began targeting DNC officials and others involved in the party. According to news reports, Russian hackers obtained the emails of John Podesta, chairman of Hillary Clinton's presidential campaign on March 19, 2016.⁶ Similarly, "the hacking of the DCCC took place around March or April of 2016."⁷

Fallout from the disclosures mired congressional candidates in accusations of scandal,⁸ and led to the resignation of a DNC leader.⁹ The New York Times reported that the RNC's computer systems were also attacked.¹⁰ News outlets report that hackers attempted to penetrate the RNC's computer network "using the same techniques that allowed them to infiltrate its Democratic counterpart."¹¹ "Once inside, [hackers] reportedly were able to access a trove of DNC opposition research on Mr. Trump, then a candidate."¹²

² Eric Lipton, David E. Sanger, and Scott Shane, *The Perfect Weapon: How Russian Cyberpower Invaded the U.S.*, NY Times (Dec. 13, 2016), <http://www.nytimes.com/2016/12/13/us/politics/russia-hack-election-dnc.html>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Jonathan Martin and Alan Rappeport, *Debbie Wasserman Schultz to Resign D.N.C.* *Post*, NY Times (July 24, 2016), <http://www.nytimes.com/2016/07/25/us/politics/debbie-wasserman-schultz-dnc-wikileaks-emails.html>.

¹⁰ David E. Sanger and Scott Shane, *Russian Hackers Acted to Aid Trump in Election, US Says*, NY Times (Dec. 9, 2016), <http://www.nytimes.com/2016/12/09/us/obama-russia-election-hack.html>.

¹¹ Shane Harris, Devlin Barrett, and Julian E. Barnes, *Republican National Committee Security Foiled Russian Hackers*, Wall St. J. (Dec. 16, 2016), <http://www.wsj.com/articles/republican-national-committee-security-foiled-russian-hackers-1481850043>.

¹² *Id.*

In October 2016, prior to the outcome of the election, the Obama administration accused the Russian government of perpetrating the attacks on the U.S. election process.¹³ “The U.S. Intelligence Community (USIC) is confident that the Russian Government directed the recent compromises of e-mails from US persons and institutions,” said the Department of Homeland Security and Office of the Director of National Intelligence in a joint statement, which “intended to interfere with the US election process.”¹⁴ The DHS and ODNI concluded “We believe, based on the scope and sensitivity of these efforts, that only Russia's senior-most officials could have authorized these activities.”¹⁵

The U.S. Intelligence Community recently reaffirmed its assessment that the Russian government was responsible for interference in the 2016 Presidential elections.¹⁶ Press reports indicate that FBI Director Comey agreed with this assessment. “Earlier this week, I met separately with FBI [Director] James Comey and [Director of National Intelligence] Jim Clapper, and there is strong consensus among us on the scope, nature, and intent of Russian interference in our presidential election,” said CIA Director John Brennan.¹⁷ President Obama “has ordered a full review of foreign-based digital attacks that U.S. intelligence agencies say were aimed at influencing this year’s presidential election.”¹⁸

Investigations undertaken by private security firms, apart from the FBI, indicate that the attacks on the 2016 U.S. Presidential election also threaten democratic institutions in other countries. The private cybersecurity firm hired by the DNC to investigate the hacks has published evidence pointing to the Russian military’s involvement.¹⁹ CrowdStrike “linked

¹³ Ellen Nakashima, *U.S. Government Officially Accuses Russia of Hacking Campaign to Interfere with Elections*, Wash. Post (Oct. 7, 2016), <http://wpo.st/cuWN2>.

¹⁴ *Joint Statement from the Department of Homeland Security and Office of the Director of National Intelligence on Election Security* (Oct. 7, 2016), <https://www.dni.gov/index.php/newsroom/press-releases/215-press-releases-2016/1423-joint-dhs-odni-election-security-statement>.

¹⁵ *Id.*

¹⁶ Adam Entous and Ellen Nakashima, *FBI in Agreement with CIA that Russia Aimed to Help Trump Win White House*, Wash. Post (Dec. 16, 2016), <http://wpo.st/yWaN2>.

¹⁷ *Id.*

¹⁸ Brian Bennett and W.J. Hennigan, *Obama Orders Full Review of Russian Hacking During the 2016 Election*, L.A. Times (Dec. 9, 2016), <http://www.latimes.com/nation/la-na-hacking-election-20161209-story.html>.

¹⁹ Ellen Nakashima, *Cybersecurity Firm Finds Evidence That Russian Military Unit Was Behind DNC Hack*, Wash. Post (Dec. 22, 2016), <http://wpo.st/EX6O2>.

malware used in the DNC intrusion to malware used to hack and track an Android phone app used by the Ukrainian army in its battle against pro-Russia separatists in eastern Ukraine from late 2014 through 2016.”²⁰ CrowdStrike co-founder Dmitri Alperovitch concluded, “we have high confidence” it was a unit of the GRU, Russia’s military intelligence agency.²¹

Background – The FBI’s Authority to Investigate Cyberattacks

The FBI has recognized that the nation’s “critical infrastructure, including both private and public sector networks, are targeted by adversaries.”²² Among the various federal agencies tasked with ensuring the nation’s cybersecurity, “the FBI is the lead federal agency for investigating cyber attacks by criminals, overseas adversaries, and terrorists.”²³ This authority is set forth in Presidential Policy Directive-41.²⁴ The FBI has also acknowledged threats to our electoral system. “Although individual states have primary responsibility for conducting fair and impartial elections, the FBI becomes involved when paramount federal interests are affected or electoral abuse occurs,” testified FBI Director James Comey.²⁵

Background – The Response of the Democratic and Republican Leaders

Republican and Democrat political leaders have called for an investigation into Russia’s interference in the 2016 presidential election. “We need a select committee,” Sen. John McCain (R-AZ) said recently.²⁶ “We need

²⁰ *Id.*

²¹ *Id.* See also *Use of Fancy Bear Android Malware in Tracking of Ukrainian Field Artillery Units*, CrowdStrike (Dec. 22, 2016), <https://www.crowdstrike.com/wp-content/brochures/FancyBearTracksUkrainianArtillery.pdf>.

²² *What We Investigate, Cyber Crime*, FBI, (last visited Dec. 16, 2016), <https://www.fbi.gov/investigate/cyber>.

²³ *Id.* See also *Countering the Cyber Threat, New U.S. Cyber Security Policy Codifies Agency Roles*, FBI (July 26, 2016), <https://www.fbi.gov/news/stories/new-us-cyber-security-policy-codifies-agency-role> (“As the lead for threat response, the FBI will play a key role in the event of a significant cyber incident, communicating with field-level coordinators on the ground to coordinate an effective, multi-agency response to the incident.”).

²⁴ PPD-41 (July 26, 2016), <https://www.whitehouse.gov/the-press-office/2016/07/26/presidential-policy-directive-united-states-cyber-incident>.

²⁵ *Statement Before the House Judiciary Cmte. on Oversight of the Federal Bureau of Investigation*, James Comey, FBI Dir. (Sept. 28, 2016), <https://www.fbi.gov/news/testimony/oversight-of-the-federal-bureau-of-investigation>.

²⁶ Mahita Gajanan, *‘They May Destroy Democracy.’ John McCain Warns of Russian Election Hack Aftermath*, Time (Dec. 18, 2016), <http://time.com/4605818/john-mccain-donald-trump-russia/>.

to get to the bottom of this. We need to find out exactly what was done and what the implications of the attacks were, especially if they had an effect on our election.” Senator Lindsey Graham (R-SC) said “I do believe the Russians hacked into the (Democratic National Committee). I do believe they hacked into Podesta’s email account. They hacked into my campaign account. I do believe that all the information released publicly hurt Clinton and didn't hurt Trump. I don't think the outcome of the election is in doubt. What we should do is not turn on each other but work as one people to push back on Russia.”²⁷ In a letter to President Obama, seven Democrats on the Senate Intelligence Committee stated, “We believe there is additional information concerning the Russian Government and the U.S. election that should be declassified and released to the public. We are conveying specifics through classified channels.”²⁸

A bipartisan group of Senators condemned the Russian interference and called for an investigation. “For years,” wrote Senators McCain (R-AZ), Lindsey Graham (R-SC), Charles E. Schumer (D-NY), and Jack Reed (D-RI), “foreign adversaries have directed cyberattacks at America’s physical, economic, and military infrastructure, while stealing our intellectual property. Now our democratic institutions have been targeted. Recent reports of Russian interference in our election should alarm every American.”²⁹ The Senators called on their colleagues to “work together, and across the jurisdictional lines of the Congress, to examine these recent incidents thoroughly and devise comprehensive solutions to deter and defend against further cyberattacks.”³⁰

As the federal government’s cybersecurity leader, the FBI is entrusted with protecting the cybersecurity of the public and its institutions. The American public, thus, has a great interest in understanding the nature of the FBI’s response to the Russian interference with the 2016 Presidential election, as well as the agency procedures for responding to unlawful hacks.

²⁷ Danielle Diaz, *Graham: Russians Hacked my Campaign Email Account*, CNN (Dec. 14, 2016), <http://www.cnn.com/2016/12/14/politics/lindsey-graham-hacking-russia-donald-trump/>.

²⁸ Letter from Sen. Ron Wyden et al. to President Barack Obama (Nov. 29, 2016), <https://www.wyden.senate.gov/download/?id=D12DD589-5800-4BEF-9F93-A0A122F38D29&download=1>.

²⁹ *Statement by McCain, Schumer, Graham & Reed on Reports that Russia Interfered in 2016 Election* (Dec. 11, 2016), <http://www.mccain.senate.gov/public/index.cfm/press-releases?ID=1472FA8C-6CB2-417A-8DB8-6D770BB87299>.

³⁰ *Id.*

Documents Requested

- (1) All records including, but not limited to, memos, reports, guidelines, procedures, summaries, and emails pertaining to the FBI's investigation of Russian-sponsored cyber attack on the RNC, DNC, and DCCC.
- (2) All records of communications to the RNC, DNC, and DCCC regarding the threat of Russian interference in the 2016 Presidential election.
- (3) All records of communications with other federal agencies regarding Russian interference in the 2016 Presidential election.
- (4) All records including, but not limited to, memos, reports, guidelines, and procedures pertaining to the FBI's procedure to notify targets of cyber attacks.

Request for "News Media" Fee Status and Fee Waiver

EPIC is a "representative of the news media" for fee classification purposes.³¹ Based on EPIC's status as a "news media" requester, EPIC is entitled to receive the requested record with only duplication fees assessed.³²

Further, because disclosure of this information will "contribute significantly to public understanding of the operations or activities of the government," any duplication fees should be waived.³³ EPIC's request satisfies the FBI's factors for granting a fee waiver.³⁴

First, EPIC has no commercial interest in disclosure of the requested records.³⁵ EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.³⁶

Second, disclosure of the Agreement is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."³⁷ Because this request pertains to an

³¹ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

³² 5 U.S.C. § 552(a)(4)(A)(ii)(II).

³³ § 552(a)(4)(A)(iii).

³⁴ 43 C.F.R. § 2.48.

³⁵ § 2.48(b).

³⁶ *About EPIC*, EPIC (2016), <https://epic.org/epic/about.html>.

³⁷ § 2.45(a)(1).

agreement with the US government, it speaks to “operations or activities of the Federal government.”³⁸ Disclosure of requested records would be “meaningfully informative,” because they speak directly to the nature of the FBI’s response to the allegations of Russian interference with the 2016 Presidential election.³⁹ The records would describe the scope of the agency’s response, the timing, and reveal the procedures followed by the FBI in response to Russian cyber attack on the 2016 Presidential election.⁴⁰

Disclosure of these records also “will contribute to the understanding of a reasonably broad audience of persons interested in the subject” because understanding how the lead cybersecurity agency responded to one of the most effective cyberattacks in history is significant to all individuals and institutions relying on a functioning infrastructure.⁴¹ Because EPIC is a “news media” organization under the meaning of the FOIA, the FBI should presume EPIC has the “ability and intent” to disseminate the information.⁴² Lastly, disclosure is likely to “significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject,” because: the information requested is new, it does not pertain to data that has been previously released, and it would reveal FBI operations that are currently unknown.⁴³

For these reasons, a fee waiver should be granted.

Request for Expedited Processing

Expedited processing is justified because this request: 1) is made by an organization “primarily engaged in disseminating information”; and 2) covers information about which there is an “urgency to inform the public about an actual or alleged federal government activity.”⁴⁴

First, EPIC is an organization “primarily engaged in disseminating information.”⁴⁵ Second, there is an urgency to inform the public about the FBI’s response to the Russian attack on the 2016 Presidential election. The information requested “refers to a breaking news story of general public

³⁸ § 2.48(a)(1).

³⁹ § 2.48(a)(2)(i).

⁴⁰ § 2.48(a)(2)(ii).

⁴¹ § 2.48(a)(2)(iii).

⁴² § 2.48(a)(2)(v).

⁴³ § 2.48(a)(3)–(4).

⁴⁴ 5 U.S.C. § 552(a)(6)(E)(v)(II); § 2.20(a)(2).

⁴⁵ *ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.C. Cir. 2004).

interest.”⁴⁶ With news stories about Russian interference with the 2016 Presidential election dominating the headlines, the records requested are of vital public interest. Coupled with reports that Russian hackers are now attacking German national elections, it is clear that the cybersecurity threat posed by Russian hackers, and the FBI’s response to that threat, is of critical public interest.⁴⁷

In submitting this request for expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief.⁴⁸

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), I anticipate your determination within ten business days. For questions I can be contacted at 202-483-1140 or FOIA@epic.org.

Respectfully Submitted,

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EPIC International Law Fellow

John Tran
EPIC FOIA Counsel
Director, Open Government Project

⁴⁶ § 2.20(a)(2)(iii).

⁴⁷ Melissa Eddy, *After a Cyberattack, Germany Fears Election Disruption*, NY Times (Dec. 8, 2016), <http://www.nytimes.com/2016/12/08/world/europe/germany-russia-hacking.html>.

⁴⁸ § 2.20(b)(2).